

MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED DOCUMENT

TO: Emery Milliken, General Counsel, DHHS

FROM: John P. Barkley Assistant Attorney General

RE: Richard Allen Kono, et al v. Cumberland Co. Hospital System and Damon Arrington, 13 CVS 02409
Richard Allen Kono, et al v. DHHS (TA-24025)

DATE: October 20, 2015

We have reached a settlement in this case, subject to your approval. The Settlement is for \$100,000 and settles both the Superior Court action against a local medical examiner and the tort claim against DHHS. Grayson Kelley approved our representation of the medical examiner, Mr. Arrington. Prior to mediation, you authorized settlement up to \$100,000 for DHHS.

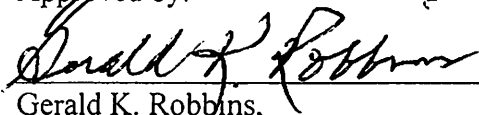
This involves a lawsuit filed in Superior Court in Robeson County naming Cumberland County Hospital System and Damon Arrington, a local medical examiner for Cumberland County and agent of DHHS, as defendants. Plaintiffs also filed a tort claim against DHHS. The Plaintiffs are the adult children of Larry Kono, and the estate of their mother, making claims involving the mishandling of the body of their father, Mr. Larry Kono, after his death, and for emotional distress as a result of the mishandling of the body. Mr. Kono died at home, sitting at a table in the kitchen. In the early morning of March 4 his body was taken to Cape Fear Valley Hospital, where death was pronounced in the ER; the body was then taken to the morgue. The medical examiner came to the hospital around 5 pm on March 4, did his investigation, filled out the ME investigation report form, and left. The body remained in the hospital morgue until March 6, when the funeral home arranged to pick up the body; and found the body unrefrigerated and partially decomposed. The funeral home advised against the family viewing the body.

The lawsuit claims that the hospital and the ME had a duty to properly take care of the body and that it should have been refrigerated but was left out of refrigeration, causing the decomposition. They made claims of corpse mutilation/disfigurement and mishandling the body, intentional and negligent infliction of emotional distress and punitive damages. The claim against the ME was that he had jurisdiction of the body and therefore had a statutory duty to see that the hospital kept it refrigerated.

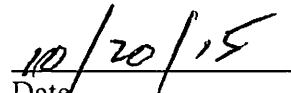
As we discussed, we recommend settling the case. The exposure to liability going to trial would be potentially hundreds of thousands (possibly millions) of dollars if this case made it to a

jury. The Hospital is taking a hard line on the case and not settling as expected. I think it is in the interest of Mr. Arrington and DHHS to settle this matter for the agreed amount of \$100,000.00. Discovery has already been costly in this case, and there will be many more depositions, transcripts and travel costs if we proceed with the case. There are expert witnesses to depose that will require travel to Florida, Virginia Beach, Missouri, and two different cities in Texas. By settling for this amount we can avoid costly discovery, a costly trial, and avoid the risk of a jury award for damages. The Plaintiffs will dismiss both the superior court action and the tort claim, with prejudice, as a result of the settlement. The Tort Claims section agrees with this settlement.

Approved by:



Gerald K. Robbins,
Special Deputy Attorney General



Date